

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARJORIE MARGOLIES-MEZVINSKY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
US AIR CORPORATION, JOHN DOE(S)	:	CIVIL ACTION
A-Z (Fictitious Names) as person	:	
or persons identified as	:	No. 98-1526
passengers aboard US AIRWAYS	:	
Flight #94 from Pittsburgh,	:	
Pennsylvania to Philadelphia,	:	
Pennsylvania,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

JOYNER, J.

JANUARY

, 2000

Plaintiff, Marjorie Margolies-Mezvinsky, has sued US Airways, Inc. ("US Airways"), as well as an unknown passenger, asserting claims of negligence. Presently before the Court is Defendant US Airways, Inc.'s Motion for Summary Judgment. For the following reasons, Defendant's Motion is granted.

BACKGROUND

On October 14, 1996, Plaintiff flew from Pittsburgh to Philadelphia on US Airways flight #94. She states that the flight was turbulent, and the landing "extremely rough." Complaint at ¶ 8. When the airplane arrived at its gate and the passengers stood to retrieve their luggage, a passenger seated behind Plaintiff opened the overhead luggage compartment. A piece of luggage fell from the overhead luggage compartment and struck Plaintiff "on her neck and back." Complaint at ¶ 9.

Plaintiff states that she was "knocked unconscious for several seconds." Id.

Plaintiff sued US Airways, Inc., and the unknown passenger who opened the overhead luggage compartment, asserting negligence claims against each. Plaintiff claims damages for medical expenses. US Airways motioned for Summary Judgment under Fed. R. Civ. P. 56(b), which is currently before the Court.

DISCUSSION

I. Summary Judgment Standard

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, reveal no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Our responsibility is not to resolve disputed issues of fact, but to determine whether any factual issues exist to be tried. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-49 (1986). The presence of "a mere scintilla of evidence" in the nonmovant's favor will not avoid summary judgment. Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989) (citing Anderson, 477 U.S. at 249). Rather, we will grant summary judgment unless "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

In making this determination, all of the facts must be viewed in the light most favorable to the non-moving party and all reasonable inferences must be drawn in favor of the non-moving party. Id. at 256. Once the moving party has met the initial burden of demonstrating the absence of a genuine issue of material fact, the non-moving party must establish the existence

of each element of its case. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)).

II. Summary Judgment Is Appropriate In This Case

Plaintiff's Opposition to Defendant's Motion for Summary Judgment does not set forth any genuine issue of material fact. Plaintiff claims in the conclusion of her Memorandum that "[t]he discovery documents produced by Defendant, deposition transcripts and declarations of experts all establish genuine issues of material fact as to breach of duty and causation." Plaintiff's Opposition at 13. However, there is no referent for this assertion in the body of Plaintiff's Memorandum. The section of Plaintiff's Memorandum entitled "Plaintiff has established genuine issues of material fact..." consists entirely of legal arguments about the appropriate standard of care to be applied in this case, including a citation to a Ninth Circuit decision which it appears has never been cited by another court: Andrews v. Airlines, Inc., 24 F.3d 39 (9th Cir. 1994). See Plaintiff's Opposition at 7-10.

Plaintiff does argue that summary judgment is inappropriate because she says that when Defendant's Motion was filed discovery was not yet closed and a discovery dispute was pending with the Court. See Plaintiff's Opposition at 6-7. This argument is factually incorrect - discovery was closed, and the discovery dispute that Plaintiff refers to was decided by this Court's order of March 8, 1999, which predates Defendant's Motion for Summary Judgment by over three weeks.

Plaintiff has failed to establish the existence of a genuine issue of material fact. Accordingly, Plaintiff has the burden of establishing each element of her case.

III. Plaintiff Has Not Set Forth An Applicable Standard of Care Owed By Defendant

Plaintiff has sued an airline for negligence in the operation of its airline, under a state law claim of negligence. Plaintiff proposes a state law standard of care. See Plaintiff's Opposition to Summary Judgment at 7. There is disagreement among courts as to whether the Federal Aviation Act ("FAA Act") preempts state regulation of air safety standards, and if so to what degree. See Kathleen Bicek Bezdichek, Annotation, Liability of Air Carrier for Injury To Passenger Caused By Fall of Object From Overhead Baggage Compartment, 32 A.L.R.5th 1, § 3 (1999) (discussing disagreements among courts as to whether a negligence claim for baggage falling from an overhead luggage compartment is preempted by the FAA Act). The Third Circuit has ruled on this issue, holding that "federal law establishes the applicable standards of care in the field of air safety, generally, thus preempting the entire field from state and territorial regulation." Abdullah v. American Airlines, Inc., 181 F.3d 363, 367 (3d. Cir. 1999).

As a result of Abdullah, it is clear that Plaintiff's case cannot be based upon a state law standard of care, because the FAA Act preempts the entire field of airline safety. Abdullah did leave open the possibility that a state law remedy could be applied if a plaintiff could establish a violation of a standard of care created by federal airline safety laws and regulation. Id. at 375-76. However, Plaintiff has not introduced any

admissible evidence of a violation of a standard of care created by federal law.¹

As stated above, the Court has found that there is no genuine issue of material fact remaining in this case. Plaintiff accordingly has the burden to establish each element of her case. One of the basic elements of any negligence claim is that the defendant owes a duty to the plaintiff. See, e.g., Kearns v. Minnesota Mut. Life Ins. Co., 1999 U.S. Dist. LEXIS 18852, at *26 (E.D.Pa. 1999). As Plaintiff has not set forward an applicable duty that Defendant owes to Plaintiff, she has not established one of the basic elements of her claim.

CONCLUSION

Plaintiff's cause of action against US Airways is for negligence during the operation of an airplane. Under Abdullah v. American Airlines, Inc., 181 F.3d at 367, federal regulation of air safety preempts the entire field from state regulation. As a result, any breach of duty claimed by Plaintiff must come

¹ Plaintiff's Opposition to Defendant's Motion for Summary Judgment did include a "Declaration" of an expert witness, which makes statements relating to FAA Regulations. This "Declaration" was stricken by the Court's Order dated November 30, 1999, because Plaintiff failed to identify the expert by the appropriate deadline, instead choosing to simply attach the expert's "Declaration" to its memorandum (five months after the date for identification had passed, and without mentioning this breach of procedure). Plaintiff had, the Court noted in that order, repeatedly violated court orders and the rules of this forum. In the instant matter, Plaintiff has had nearly six months since the Third Circuit decided Abdullah. Plaintiff did not seek leave of Court to supplement her pleadings after this decision, nor did she even inform the Court of this important decision. As a result of this, and in light of Plaintiff's previous violations of this Court's orders and the rules of this forum, the Court does not find it appropriate to order Plaintiff to supplement her pleadings to set out a federal standard of care.

from federal law. Because Plaintiff has not established that there exists a genuine issue of material fact, it is her burden to establish each element of her case. As she has failed to set out a duty that Defendant owes to her under federal law, Plaintiff has not established a key element of her case. Accordingly, judgment for the Defendant is appropriate.

An appropriate Order follows.

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passengers aboard US AIRWAYS	:	
Flight #94 from Pittsburgh,	:	
Pennsylvania to Philadelphia,	:	
Pennsylvania,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this day of January, 2000, upon consideration of Defendant US Airways, Inc.'s Motion for Summary Judgment (Document No. 24), as well as the parties' responses, and in accordance with the foregoing Memorandum, it is hereby ORDERED that the Motion is GRANTED. Summary judgment shall be ENTERED in favor of Defendant, and Count I of Plaintiff's Complaint is accordingly DISMISSED.

BY THE COURT:

J. CURTIS JOYNER, J.